No. 88-1813

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THOMAS J. RALEY,

Petitioner,

v.

FRANKLIN W. HUGHES AND SANDRA L. HUGHES,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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QUESTIONS PRESENTED

Whether decisions by both the Maryland Court of Special Appeals and Maryland Court of Appeals affirming the trial court's finding that a conveyance between husband and wife for fair consideration was not a "Fraudulent Conveyance" constitutes a violation of Due Process guaranteed by the Fourteenth Amendment.

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VS.

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RESPONDENTS

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

Respondents, Franklin W. Hughes and Sandra Hughes, his wife ("The Hugheses"), respond as follows to the Petition For Writ of Certiorari filed by Thomas J. Raley ("Raley").

COUNTERSTATEMENT OF THE CASE

This case originated as a Complaint filed by Raley to set aside an alleged fraudulent conveyance of stock by and between the Hugheses.

Originally tried on the merits without benefit of a jury, in the Circuit Court for Baltimore County, a verdict was rendered in favor of the Hugheses. Raley appealed that finding to the Court of Special Appeals.

In a Per Curiam opinion, the Court of Special Appeals affirmed the verdict of the trial court. A subsequent Petition for Writ of Certiorari to the Court of Appeals filed by Raley was denied.

FACTUAL BACKGROUND

Sometime in 1971 or 1972, Raley entered into an Agreement with Franklin Hughes to operate a bar known as the Holiday House in Baltimore, Maryland. Later, in May of 1975, Raley and Hughes executed an agreement of sale of the business. For the agreed price of Two Hundred Fifty Thousand Dollars ($250,000.00), Hughes assumed the lease, tangible and personal property, liquor license, and liabilities. See Petitioner's Appendix at page 28. To finance the purchase, Sandra Hughes agreed to pledge the Hughes' marital home as collateral for a $50,000.00 loan from Equitable Bank. As consideration for her acquiescence, Sandra Hughes was promised to be made "one half owner" of the bar.

Subsequently, in January of 1978, Raley and Hughes entered into yet another agreement concerning the bar and payment of the purchase price to Raley. See Petitioner's Appendix at page 29.

In December of 1979, in order to receive certain tax benefits and to fulfill the promise to his wife that he would make her "one half owner" of the bar, Franklin Hughes transferred all of his shares in a company known as F.W. Hughes, Inc, to himself and Sandra Hughes, as tenants by the entireties. At that time, Hughes was making payments pursuant to the 1978 Agreement, and was, according to the uncontroverted evidence adduced at trial, solvent.

On January 18, 1983, after being released from incarceration for a

conviction of common law assault, Raley filed suit against Franklin Hughes, individually, for breach of the 1978 agreement. On September 11, 1985, Raley obtained a judgment against Hughes, individually, in the amount of Three Hundred Fifty Eight Thousand Eighty-Five Dollars and Twenty Cents ($358,085.20) plus interest from July 11, 1985.

It was not until after obtaining the judgment against Franklin Hughes and attempting to collect it that Raley claims to have "discovered" the fact of the 1979 stock transfer. Following this discovery, and nearly six years after the stock transfer took place, Raley filed suit against the Hughes to set aside the stock transfer as an alleged fraudulent inter-spousel conveyance, citing as statutory

basis, the Maryland Fraudulent Conveyance Act.

The issue presented to this Court is whether the findings of three Maryland courts upholding the stock transfer are, as Raley suggests, tantamount to a denial of Due Process guaranteed by the Fourteenth Amendment.

REASONS FOR DENYING THIS WRIT

Rule 17 of the Rules of the Supreme Court is explicit in addressing the kinds of cases that this court will accept by way of a Writ of Certiorari. "A review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore..." Rule 17, Rules of the Supreme Court. (Emphasis Added).

Raley contends that the Maryland Courts' refusal to set aside an [alleged] fraudulent conveyance was contrary to the settled law of the State of Maryland and hence denied him due process of law. Raley's argument fails on two levels. Raley failed to meet the statutory requirements to prove that the stock transfer was a fraudulent conveyance. Specifically, Raley failed to rebut the testimony that Franklin Hughes was solvent at the time of the transfer; failed to prove that the transfer was made without adequate consideration being given by Sandra Hughes; and failed to prove that Sandra Hughes had any knowledge of or participated in the alleged fraud. Raley does not offer this Court any reasons that this case is of such an important

magnitude to warrant further scrutiny by the highest court in the land. Raley seems to be arguing that the mere fact of the results, which were adverse to him, constitute a denial of Due Process. If that assertion has any merit, the implications for this court are astounding.

I. The Decision Of The Maryland Courts Correctly Applied The Relevant Provisions Of The Fraudulent Conveyance Act To The Facts Of The Case.

The Hugheses concur with Raley's contention that the Uniform Fraudulent Conveyance Act is applicable to this case. Section 15-204 states:

> "Every conveyance made, and every obligation incurred by a person who is or will be rendered insolvent by it, is fraudulent as to creditors without intent, if the conveyance is made or the

> obligation is incurred without further consideration".

Md. Ann. Code Commercial Law Art. (1983 Repl. Vol.) Section 15-204.

What Raley repeatedly ignores, and what he would have this Court dismiss, is that the evidence and testimony at trial clearly demonstrated that Franklin Hughes was solvent when he transferred the stock to himself and his wife in December of 1979. Furthermore, Raley offered no evidence to rebut the Hughes proffer of evidence of solvency, and similarly offered no evidence that the conveyance rendered Franklin Hughes insolvent. To the contrary, both Raley and a witness in his case in chief testified that Franklin Hughes appeared to be solvent in December of 1979.

Indebtedness at the time of the conveyance may be prima facie evidence of fraud which throws the onus of proving solvency on the transferor, but where there is proof of valuable consideration, and proof that the transferor was solvent at the time of transfer, the transfer cannot be set aside, Ellinger v. Crowl, 17 Md. 361 (1861).

Raley aptly cites Lacey v. Van Royen a seminal case on point. Insolvency is a necessary element to striking down a [a conveyance] under ... the Uniform Fraudulent Conveyance Act. Lacey vs. Van Royen, 259 Md. 80, 92 (1970). The Hugheses satisfied their burden of proving solvency both by way of their direct testimony and that of their former accountant. In contrast, Raley failed

controvert the evidence of solvency.

On cross examination at trial, therewas the following colloquy between Raley and counsel for the Hugheses:

Q. December of 1979. Your lawyer filed a law suit on your behalf. Do you have any knowledge of the solvency of Frank W. Hughes?

A. The corporation?

Q. No. Frank W. Hughes, the man you have got a judgment against, not the corporation.

A. In 1979 did I have any idea of his solvency?

Q. Yes, whether he was insolvent or solvent?

A. He appeared solvent to me.

Raley's assertion that the

"Defendants did not put forth any tangible evidence to establish that Hughes was solvent at the time of the contested conveyance" is unfounded, and appears to set forth a novel standard of proof, that of "the tangibility" of the evidence. Not only did Raley himself testify that Hughes "appeared solvent" in 1979, but the Hughes also offered the direct testimony of their accountant, Melvin Rose, who testified as to Hughes' solvency:

Q. Mr. Rose, I want you to listen clearly to what I say and I want you to direct your answers only to what I ask you. In 1979, did you advise Mr. and Mrs. Raley -- strike that -- Mr. and Mrs. Hughes, a sobbing Mrs. Hughes, did you advise her and her husband that because she hade given her house as collateral

for a debt to Equitable Trust and General Electric Credit that it would be fair and wise and prudent for her to become an owner of the stock, one-half interest jointly as marital property in F. Hughes, Inc.?

A. Yes, I did.

Q. At that time, was Mr. Hughes solvent?

A. Yes, he was, to the best of my knowledge.

Q. Has he remained solvent to this date?

A. Yes, he has.

It is interesting to note that Melvin Rose was originally called as a witness in Raley's case in chief.

The second hurdle that a party

challenging a conveyance must surmount in order to prevail under Section 15-204 is a showing that the conveyance was made without fair consideration. Raley failed to present even a scintilla of evidence that this transfer was done without fair consideration.

The trial testimony demonstrates that in 1975, when additional capital was required to finance Hughes' purchase of the Holiday House Bar, Sandra Hughes acquiesced to signing a second mortgage on the Hughes' residence. Sandra Hughes further testified that she did so with the understanding that she would be made "one-half" owner of the business. The trial court found this to be adequate consideration to support the conveyance notwithstanding the fact that the

consideration predated the stock transfer.

> "Fair consideration is given for property or an obligation if:
>
> (1) in exchange for the property or obligation, as far as a fair equivalent for it and in good faith, property is conveyed or an antecedent debt is satisfied; or
>
> (2) the property or obligation is received to secure a present advance or antecedent debt in an amount not disproportionate ley small as compared to the value of the property or obligation obtained".

Md. Ann. Code, Commercial Law Art, (1983 Repl. Vol.) Section 15-203. (Emphasis added).

Sandra Hughes' testimony satisfied the burden of proving that the stock transfer was done in return for adequate and fair consideration. "Valuable consideration may consist in right, profit or benefit to one party or forbearance, detriment,

loss or responsibility given, suffered or undertaken by the other party . . ." Broaddus v. First National Bank, 161 Md, 116, 122 (1931). In the case at bar, Sandra Hughes undertook joint liability on a second mortgage to the Equitable Bank. This was surely adequate and fair consideration to support the conveyance. Kennard v. Elkton Banking & Trust Co., 176 Md. 499 (1939).

In his Petition, Raley reiterates ad infinitum, the same arguments raised at the trial level, in the Court of Special Appeals, and in the Court of Appeals; all of them unpersuasive and unsupported by the evidence introduced at trial. He can not now, as he tried to do in his appeal to The Court of Special Appeals, raise issues not preserved at trial. Nor can

he dupe this Court into believing that an adverse finding, which was based on application of the relevant law to the facts, is equivalent to a violation of Due Process.

Raley contends that the findings of the trial court, which were affirmed by the appellate courts, were "arbitrary and capricious" and "contrary to established principles of law" See Petition at page 15. Although he acknowledges that a litigant is not guaranteed the right of appellate review, he seems to make an incredible leap of logic to posit that a bar to his continued litigation somehow denied him a "property right" without due process. This argument, however, "novel", is both legally and factually unsupportable.

Former Rule 1086 of the Rules of the Court of Special Appeals, then in effect when this appeal was pending, governing the standard of review for cases tried without a jury:

> When an action has been tried by the lower court without a jury, this Court will review the case upon both the law and the evidence, but the judgment of the lower court will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses.
>
> The case at bar, as evidenced by the sixty pages of trial testimony, documentary evidence, and most importantly, but the very clear and

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Rule 8-131(c) of the Court of Appeals and Court of Special Appeals, effective July 1, 1988, embodies substantially the identical verbiage to former Rule 1086.

concise ruling of the trial court was decided based on the law and the evidence; and the Court of Special Appeals had no alternative but to affirm the decision, as more fully set forth in its per curiam opinion. See Petitioner's Appendix at p. 1-25.

CONCLUSION

From the body of his Petition, one can only postulate the real reason Raley has requested this extraordinary relief. As it was more fully developed at trial, after Raley obtained a judgment against Franklin Hughes in 1985 which he "discovered" to be uncollectible, he and his attorneys attempted to "build a case" for fraudulent conveyance, without first attempting to ascertain facts that would

fulfill the statutory requirements of such a cause of action. After failing to construct his case at trial, Raley attempted to correct these deficiencies by filing an appeal. Interestingly, the Court recognized Raley's attempt to raise new, unappealable issues in his brief, see Petitioner's Appendix at p. 25, but remained unconvinced by his arguments. Finally, in responding to a Writ of Certiorari filed by Raley in the Court of Appeals, the Court found that there was "no showing that a review by certiorari [was] desirable and in the public interest". See Petitioner's Appendix p. 26 - 27. This Court, too, should find that the issues presented in the instant Petition do not warrant further review and should find that the Petition is frivolous

and filed in bad faith.

Respondents, Franklin W. Hughes and Sandra L. Hughes, respectfully request that the Petition for Writ of Certiorari be denied, that the Respondents be awarded attorney's fees, and costs, and that sanctions be assessed against the Peitioner for bad faith of this Petition.

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